IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5153 OF 2005

The State of Maharashtra. ... Applicant.
Versus.
Kamlabai Nivrutti Gavande & anr. ... Respondents.

Ms.S.D.Shinde, A.P.P.for the Applicant.

Smt.D.A.Dhamale for the Respondents Nos.1 & 2.

CORAM : ABHAY S. OKA, J.

DATED : 18th October, 2005.

P.C.:

1. Heard the learned A.P.P. and the learned Advocate appearing for the Respondents Nos.1 and 2. The learned A.P.P. submitted that the report of the Chemical Analyser shows that the Respondents were found in possession of the contraband which contained constituents of cannabis. The learned A.P.P. therefore submitted that the decision of the learned Single Judge of this Court reported in 2002 All M.R.(Cri) page 1381 (Madhukar Pandurang Kanthale v/s. State of Maharashtra) will not apply to the facts of this case as the case before the learned Single Judge related to the contraband which was only Bhang and therefore, it is held that it is not a narcotic drug or psychotropic substance. The learned A.P.P. has placed on record a copy of the report of the Chemical Analyser.

2. Paragraph 6 of the decision in the case of

Madhukar (supra) reads thus:

> "6. As it was categorically opined by a high ranking officer from Narcotics Control Bureau that Bhang is not covered within the meaning of Cannabis (hemp), the Court placing reliance on the same and on reading the definition of cannabis (hemp) came to the conclusion that Bhang is not a Narcotic or Psychotropic drug and as such its possession is not an offence. Taking this view of the matter, the conviction and substances of the accused under section 8 and 20 of the NDPS Act was set aside. The learned Counsel thereafter placed reliance on a judgment in the case of Nirmal Chandra Sahoo v/s. State of Orissa, reported in 1996(2) Crimes 22. The Orissa High Court quashed the proceedings initiated against the accused under section 20(b) of NDPS Act when Bhang was found to be in his possession. In the said case, though the prosecution claimed to have recovered 12 Kgs. of Ganja, the analyst report indicated that the sample contained partly powdered cannabis leaves (bhang) with seeds of cannabis plant and as the expert's opinion did not support the prosecution case that what was seized was ganja, the prosecution came to be quashed. In the said case, the learned Judge

of Orissa High Court held that Bhang not being a contraband article and not punishable under section 20(b) of the Act, proceeded to quash the proceedings."

In view of the said decision, the learned Sessions Judge came to the prima-facie conclusion that the contraband found in possession of the accused persons does not attract the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. A order of cancellation of bail cannot be passed as a matter of course. On the basis of the material on record no fault can be found with the order of the learned Sessions Judge. The learned Judge has adopted the test laid down in the case of Madhukar (supra) and granted bail. It is not a case where allegation is regarding misuse of liberty granted. The Application is rejected. However, it is made clear that the observations which are made by the learned Sessions Judge and this Court are for limited purpose of considering the prayer for bail and the trial Court will not be influenced by the same at the time of trial.

Judge.